

California Integrated Waste Management Board

Board Meeting

March 15-16, 2005

AGENDA ITEM 32

ITEM

Discussion And Request For Rulemaking Direction To Notice Revisions To The Proposed Regulations For Long-Term Gas Violation For An Additional 15-Day Comment Period And Request For Direction On Whether To Initiate Separate Rulemaking To Include Additional Amendments To The Existing State Minimum Standards For Gas Monitoring And Control At Active Sites

I. ISSUE/PROBLEM STATEMENT

The long-term gas violation policy (LTGV policy) currently in effect was developed to enable Board Members to concur with or object to a solid waste facility permit (SWFP) when a long-term violation of state minimum standards (SMS) for landfill gas exists.

In September 2003 the Permitting and Enforcement Committee directed staff to develop a new regulation to codify the LTGV policy. Staff was to include language specifying that the facility must not pose an imminent threat; the Local Enforcement Agency (LEA) must have issued an enforcement order with a compliance schedule and the operator must be making progress towards correcting the violation that is consistent with the compliance schedule. In addition, the language was to address all of ten long-term gas violation regulatory concepts previously developed in 2001-2002 and include a provision for administrative civil penalties.

The primary purpose of this item is to request further rulemaking direction on initiation of an additional 15 day comment period process to codify the LTGV policy. Staff also is seeking direction on whether to initiate a separate rulemaking to include amendments to the existing SMS for gas monitoring and control, as recommended in the 2004 "Landfill Compliance Study."

II. ITEM HISTORY

A LTGV policy was initially considered at the July 20, 1994, Permitting and Enforcement Committee and the July 27, 1994, Board meetings. At that time, the Board adopted a practice for considering concurrence in the issuance of revised permits for facilities with long-term landfill gas violations. The Board revisited the LTGV policy at its November 14, 2000, meeting. At that meeting, the Board directed staff to provide analyses specific to: (1) the "good faith" effort that is to be demonstrated by the operator and (2) the "threat to public health, safety, or environment" as these items pertain to the procedure.

A month later, the California State Auditor published a report containing a finding that the LTGV policy was inconsistent with State law. At its January 2001 meeting, the Board directed staff to work with two Board Member offices to develop regulatory concepts and bring them to the Board for consideration. Working jointly with Board Members, staff developed ten regulatory concepts. The Board also directed staff to seek input from a group of landfill gas experts on the technical issues of the ten concepts. The Permitting and Enforcement Committee further discussed this at its August 2002 meeting.

In September 2003 the Permitting and Enforcement Committee directed staff to develop a new regulation that codifies the existing LTGV policy including the ten regulatory concepts and a provision for administrative civil penalties.

In November 2003 Board staff held an informal workshop on draft regulations.

The formal rulemaking process was initiated by a 45 public comment period which ended on December 22, 2004. An additional public hearing was also held during the January 2005 Permitting and Enforcement Committee meeting.

III. OPTIONS FOR THE BOARD

1. Direct staff to formally notice the proposed LTGV regulations for 15 day comment period with all staff recommended changes in response to public input.
2. Direct staff to make revisions to their recommended changes in response to public input to the proposed regulations and formally notice the proposed LTGV regulation for 15 day comment period.
3. Direct staff to conduct further refinement of changes to the proposed LTGV regulation based on public comments and return to the Board at a future meeting for direction to formally notice the proposed regulation for 15-day comment period.
4. Direct staff to initiate a separate rulemaking to include amendments to the existing state minimum standards (SMS) for gas monitoring and control at active sites. Staff will return to the Board with a separate item proposing specific changes in the regulations and requesting direction to initiate a 45-day comment period.

IV. STAFF RECOMMENDATION

Staff recommends that the Board direct staff to implement Option 1. Staff also requests that the Board provide direction regarding Option 4.

V. ANALYSIS

A. Key Issues and Findings

Background

In 1994, anticipating the potential of revised permits needing to be heard by the Board prior to resolution of certain long-term landfill gas problems, the Board adopted a LTGV practice for considering concurrence in or objection to a proposed SWFP when a SMS violation for landfill gas exists. The practice was developed to provide a link between the Board's permitting obligations and the Board's assessment of the compliance status of facilities with landfill gas migration problems by clarifying the conditions under which Board concurrence could be appropriately granted. In particular, the practice applies to permit revisions for facilities with long-term violations (i.e., that take longer than 90 days to correct) with no imminent threat to public health and safety and the environment. The practice assumes that the SWFP application was deemed complete by the LEA and the statutory time frame for a decision to issue or not issue the permit has started.

A major step in the practice is the determination by staff of the presence of an imminent threat. Section 27 CCR 18350(d) defines an imminent threat to public health or safety or the environment to mean a violative condition which is creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the damages to persons, property, natural resources, or the public health or safety. If it is determined that an imminent threat exists, then staff would find that the long-term violation practice does not apply.

If no imminent threat exists and there is a long-term violation, the LEA will prepare an enforcement order with a time schedule for achieving compliance. If an enforcement order already exists, staff will make a determination about the operator's "good faith" effort to achieve compliance. To do this, staff will review the enforcement order issued by the LEA and the operator's compliance with that order in completing the required tasks by the required deadlines.

In the 11 years since its adoption, the LTGV practice has been used 21 times for revised permits developed by LEAs throughout the state.

Key Issues

The establishment of a landfill gas control system requires detailed investigation, design, construction, testing, and modifications which may require a number of months or, many times, more than a year to complete. A system must be "fine tuned" to fit the particular site's characteristics taking into account the site's geology, geography, waste and gas characterizations, gas generation rate volumes, as well as other considerations. Therefore, it typically takes up to two years to fully implement a landfill gas control system.

Utilization of the LTGV practice, which is now embodied within the draft regulations, has allowed facility operators to revise their permits to address changes in the solid waste infrastructure. In some cases, permit revisions have facilitated compliance with the gas control standard by increasing the amount of capital available to the operator to invest in a control system.

Attachment 1 summarizes comments received during the formal 45 day comment period which ended on December 22, 2004, and the public hearing before the Permitting and Enforcement Committee on January 10, 2005. Attachment 1 also includes staff's responses to these comments, indicating where staff proposes to change the regulations, add additional language to the statement of reasons, or make no change at all. The proposed regulations for the 15-day comment period, including staff's proposed changes, are included in Attachment 2.

In addition to the changes summarized in Attachment 1 staff has also received informal comments on an issue that is related to the LTGV practice. Several LEAs and the Enforcement Advisory Council (EAC) have requested that the Board revise the landfill gas SMS so that the more detailed SMS currently applicable to closed solid waste disposal sites would also apply to active sites. This was one of the recommendations included in the Landfill Compliance Study recently completed for the Board by GeoSyntec, Inc., in 2004. The study specifically recommended that the Board "Require same landfill gas (LFG) monitoring and control at active landfills as for closed landfills." Accordingly, staff requests direction to initiate a separate rulemaking to include additional amendments to the state minimum standards for active sites to provide this additional guidance.

Staff's reasoning for this is as follows. Both active and closed solid waste disposal sites are required by regulation to fully implement an adequate gas monitoring program to determine compliance with gas standards (i.e., 5% methane by volume in air at property boundary and 1.25% methane by volume in air within on site structures). However, the regulations for closed sites contain specific criteria regarding monitoring and controls

(e.g., number, placement, depth of wells, etc.) while the regulations for active sites are non-specific. Staff suggests that it would be appropriate to be more specific as to what type of landfill gas monitoring and control would be necessary at active sites to determine compliance with SMS for gas, in order to provide additional guidance for complying with the proposed LTGV standards. Applying the more detailed SMS for closed sites would be appropriate because both closed and active sites must meet the same gas migration SMS. Because existing regulations already require proper monitoring for gas migration at active sites, the incorporation of specific criteria would not require additional monitoring but would provide guidance as to what an adequate, proper system should include.

These additional regulatory changes are outside the scope of the proposed long-term gas violation regulations but could be included in a new separate rulemaking process should the Board so decide.

B. Environmental Issues

The California Environmental Quality Act will be addressed during the rule making process.

C. Program/Long Term Impacts

Resolution of the long-term gas violation issue will add clarity to the landfill permit process.

No long-term impacts have been noted at the time the item was prepared.

D. Stakeholder Impacts

Final resolution of the long-term gas violation issue will positively support LEAs in the landfill permitting process and provide clarity to landfill operators.

E. Fiscal Impacts

An economic and fiscal analysis has been done during the formal rulemaking process. The findings were that these regulations will have no significant fiscal impacts.

F. Legal Issues

Based on available information, staff is not aware of any legal issues related to this item.

G. Environmental Justice

Based on available information, staff is not aware of any environmental justice issues related to this item.

H. 2001 Strategic Plan

This item supports Strategic Plan Goal 4 by managing and mitigating the impacts of solid waste on public health and safety and the environment.

VI. FUNDING INFORMATION

Not Applicable

VII. ATTACHMENTS

1. Response to comments on Long Term Gas Violation Standards
2. Proposed Long-Term Gas Violation Regulations

VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION

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C. Administration Staff: N/A

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IX. WRITTEN SUPPORT AND/OR OPPOSITION

A. Support

Staff had not received any written support at the time this item was submitted for publication.

B. Opposition

Other than the comments received during the 45-day comment period and public hearing, which are summarized in Attachment 1, staff had not received any written opposition at the time this item was submitted for publication.

Response to comments on Long-Term Gas Violation Standards

Regulation section	Comment	Response
1. 21685 (d)	<u>Waste Management</u> -Unsure of compliance period for Notice & Order.	Staff will add language to the statement of reasons indicating that compliance with an enforcement order applies only to those portions of the order where the timeline has passed or upcoming timeline will not be met. No change needed in proposed regulations.
2. 21685(d)(1)(B)	<u>Orange County</u> -Need to clarify compliance point boundary location.	Existing wording is consistent with Subtitle D. Staff will add language to the statement of reasons clarifying the circumstances under which external monitoring might be sufficient to demonstrate compliance at the permitted boundary. No change needed in proposed regulations.
3. 21685(d)(3)	<u>Orange County</u> -Unclear on period for reporting monitoring results	No change needed in proposed regulations.
4. 21685(d)(4)	<u>Orange County</u> - What is the appropriate form for an imminent threat determination?	Staff will add language to the statement of reasons indicating that the determination can be part of the permit application package, a letter notice, or part of the Notice and Order. No change needed in the proposed regulations.
5. 21685(d)(5)	<u>Orange County</u> - How is the 90 day determination made?	Staff will add language to the statement of reasons indicating that a written determination is sufficient and that the CIWMB can provide assistance on this determination if asked. No change needed in the proposed regulations.
6. 21685(d)(6)(C)	<u>Glenn County</u> - Question on CIWMB review of the LEA enforcement order.	Staff will add language to the statement of reasons clarifying that failure of the CIWMB to review and comment after receipt of a draft order will not constitute a reason to deny issuance of the permit. No change needed in the proposed regulations.
7. 21685(d)(8)	<u>Orange County</u> - Repetition of possible enforcement actions.	The repetition is intended to put all relevant provisions in one place, thereby making their use easier. No change needed in the proposed regulations.
8. 21685(d)(8)(A)	<u>Rural Counties ES JPA</u> -Question on possible additional enforcement actions.	Staff will revise the wording to further clarify that the listed enforcement actions were optional and not mandatory.

9. 21685(d)(8)(A)	<u>Glenn County</u> - Question on possible additional enforcement actions.	Same as for comment 8 above.
10. 21685(d)(9)	<u>Orange County</u> - Question on interpretation of the timeline for submittal of investigative reports.	No change needed in the proposed regulations.
11. 21685(d)(9)	<u>Rural Counties ES JPA</u> –Current regulatory language, as proposed, would unnecessarily impose redundant impact analyses.	Staff will add language to the statement of reasons that this could be complied with through the CEQA process and therefore fulfill the requirement.
12.21685(d)(9)(A)	<u>Orange County</u> -Typographical error.	Staff agrees to correct.
13.21685(d)(9)(A)(ii)	<u>Orange County</u> - Clarification is needed for the LEA role in assessment of impacts to air and water quality.	Staff will revise the wording to clarify LEA is not enforcing other agency's criteria.
14.21685(d)(9)(A)(ii)	<u>Glenn County</u> - Delete LEA role in assessment of impacts to air and water quality.	Same response as for comment 13 above.

**California Code of Regulations
Title 27, Environmental Protection
Division 2, Solid Waste
Subdivision 1, Consolidated Regulations for Treatment, Storage or Disposal of Solid Waste
Chapter 4, Documentation and Reporting for Regulatory Tiers, Permits, WDRs, and Plans
Subchapter 3, Development of Waste Discharge Requirements (WDRs) and Solid Waste Facility Permits
Article 3.1. CIWMB - CIWMB Requirements**

21685. CIWMB - Proposed Permit; CIWMB Processing Requirements. (T14: §18207, §17608)

(a) The CIWMB shall stamp the proposed permit with the date of receipt at the time the envelope is opened. The CIWMB shall consider each proposed permit, any public testimony, and comments. Written comments may be submitted to the CIWMB and will become part of the CIWMB record. Such written comments shall be made available to the EA.

(b) The CIWMB shall not concur in issuance of the proposed permit if the following information, if applicable, has not been submitted to the EA and the CIWMB pursuant to PRC section 44009:

- (1) Complete and correct Report of Facility Information as certified by the EA,
- (2) EA's Permit Review Report pursuant to section 21675,
- (3) EA's proposed permit written pursuant to this Subchapter.
- (4)
 - (A) Information that the facility is identified and described in or conforms with the County Solid Waste Management Plan (PRC section 50000); and that the facility is consistent with the city or county General Plan and compatible with surrounding land use, in accordance with PRC section 50000.5; or
 - (B) After a countywide or regional agency integrated waste management plan has been approved by the CIWMB, the EA's finding that the facility has met the requirements of PRC section 50001.
- (5) Documentation sufficient for the CIWMB to deem that a Preliminary or Final Closure/Postclosure Maintenance Plan is consistent with closure and postclosure maintenance state minimum standards (including, but not limited to, Chapters 3 and 4) for those portions of the plan subject to CIWMB jurisdiction, if applicable;
 - (i) For closure plans submitted as part of a JTD, the determination whether the plans are consistent with state minimum standards shall be made within 60 days of the plans being considered complete pursuant to section 21860(c).
 - (ii) This preliminary determination shall constitute the staff recommendation for the Board consideration of concurrence with a SWFP unless the application package, of which the JTD was a part, is amended or modified.
 - (iii) This determination is solely for the Board consideration of concurrence with a SWFP and does not constitute any final determination for the closure plans review process pursuant to section 21860.
- (6) Land Use and/or Conditional Use Permits;
- (7)
 - (A) Current documentation of acceptable funding levels for Financial Assurances Documentation in accordance with Chapter 6, if applicable; and
 - (B) Current documentation of compliance with Operating Liability Requirements, if applicable (Chapter 6).
- (8) The CIWMB shall ensure the facility is operating consistent with State Minimum Standards, pursuant to Subchapter 4 of Chapter 3 of this subdivision or applicable minimum standards in Title 14 (section 17200 et seq.),
- (9) The EA finding that existing CEQA documentation is consistent with and supports the proposed permit and RFI or supporting information indicating the EA has found that approval of the proposed permit would not lead to any adverse environmental impacts and is exempt from the requirements of CEQA.

(c) The CIWMB shall either concur or object to the issuance of the proposed permit within sixty days of receipt, except as authorized by PRC section 44009, or by operator's consent. If the CIWMB objects to a proposed permit, it shall accompany its objection with an explanation of its action, which may suggest conditions or other amendments that may render the proposed permit unobjectionable; however, such suggestions do not constitute approval of the proposed permit subject to incorporation of the suggestions.

(d) For the purposes of CIWMB's determination to concur in or to object to a proposed permit pursuant to subsection (c) above, a facility that has landfill decomposition gases exceeding the compliance levels in Sections 20919.5 or 20921, or at which a hazard or nuisance may exist pursuant to Section 20919, shall be considered to be consistent with State Minimum Standards specified in Sections 20919, 20919.5, and 20921 for purposes of subdivision (b) (8) of this section if all of the following requirements have been satisfied with respect to the facility (for the purposes of this subsection, "facility" includes "disposal site"):

- (1) The operator shall have delivered all notices to the EA and owner as required by Sections 20919, 20919.5, and 20937 as applicable.
 - (A). The site-specific compliance level applicable to the facility shall be the lesser of that specified in (i) the facility's JTD/RFI, closure and postclosure maintenance plans, or the permit for the facility, or (ii) shall be the levels specified in Sections 20919.5 or 20921, as applicable.
 - (B). The facility's compliance boundary for landfill decomposition gas migration shall be the permitted facility boundary or other alternate boundary within the permitted facility boundary approved by the EA
 - (2) The EA shall have forwarded to CIWMB all notifications received pursuant to subdivision (d)(1) above.
 - (3) Landfill gas monitoring has been and is being conducted at least monthly, at a minimum, after notice to the EA and shall continue until the operator has complied with the enforcement order issued pursuant to subdivision (d)(6) below.
 - (4) The EA has determined that landfill decomposition gas generated by the facility does not constitute an imminent and substantial threat to public health and safety or the environment.
 - (A). For purposes of this section, an imminent and substantial threat to public health and safety or the environment is defined as a condition which is creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the harm to persons, property, natural resources, or the public health or safety.
 - (5) The EA has determined that to come into compliance with Sections 20919, 20919.5, and 20921 it will take the operator longer than 90 days due to the time it takes to plan and implement appropriate corrective measures.
 - (6) The facility is operating under an enforcement order issued to the operator and which meets all of the following requirements:
 - (A). The order was issued pursuant to 14 CCR 18304.1(a)(3) and includes a compliance schedule for bringing the facility into compliance with Sections 20919, 20919.5, and 20921.
 - (B). A final order has been issued pursuant to 14 CCR 18304.2.
 - (C). A copy of the proposed order and any amended order proposed by the EA was provided to the CIWMB for review and comment prior to its issuance.
 - (7) The EA has reviewed and approved and the CIWMB has reviewed all investigation reports or results, proposed workplans, or proposed gas mitigation measures submitted pursuant to the enforcement order issued pursuant to subdivision (d)(6).
 - (A). If possible, all parties shall mutually agree to time frames for EA and CIWMB review of the submitted documents so that all reviews can be completed expeditiously. In the event agreement cannot be reached, the EA and CIWMB shall determine the schedules for their reviews.
 - (8) The operator is in compliance with the approved gas mitigation measures or workplan approved by the EA and specified in the enforcement order.
 - (A). If the operator fails to comply with the enforcement order, the EA shall, as necessary and appropriate:
 - (i). Take additional enforcement action, including which may include the imposition of administrative civil penalties in an amount from one hundred dollars (\$100) up to five thousand dollars (\$5,000) for each day on which a violation occurs pursuant to Section 45011 of the Public Resources Code, or
 - (ii). Take direct cleanup action pursuant to an appropriate enforcement order.
 - (B). If the EA fails to take appropriate enforcement action as specified in 14 CCR 18084(d), CIWMB may take enforcement action pursuant to 14 CCR 18350.
 - (C). If the CIWMB takes enforcement action in lieu of the EA, any required public hearing shall be conducted by the CIWMB Executive Director or his/her designee.
 - (9) For facilities that propose a facility property boundary expansion, ~~or a footprint expansion,~~ or any other increase in facility capacity ~~(lateral or vertical)~~ as part of the permit application submitted pursuant to subdivision (c) of this section, investigations or analyses respecting landfill decomposition gases at the facility must have been conducted by the operator prior to the submittal of the permit application to the EA and the results of such investigations and analyses shall be submitted to the EA, ~~and~~ CIWMB, RWQCB, APCD/AQMD, and any other appropriate agency prior to or concurrent with the permit application.
 - (A). The investigations or analyses and shall evaluate:
 - (i). Whether the proposed expansion may increase the magnitude or complexity of the noncompliance with Sections 20919, 20919.5, and 20921
 - (ii). Whether the proposed expansion may cause potential impacts to water quality and air quality or other impacts outside the jurisdiction of the EA.
 - (B). If the results of the investigations and analyses conducted pursuant to this subdivision (d)(9)(A)(i) warrant, the operator shall include an analysis and additional feasible control measures as part of the gas mitigation measures or workplan specified in the order required by subdivision (d)(6).
- (~~d~~e) If an applicant or enforcement agency requests that revisions, additions or amendments be considered, these will be considered in accordance with the conditions specified in section 21580 and Subsection (e) of section 21650 respectively.

Note: *Authority cited: Sections 40502 and 43020, Public Resources Code.
Reference: Sections 43103, 44007-44010, and 44014, Public Resources Code.*